REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-9 remain active in this case, Claims 1-4, and 7 having been amended by the present amendment.

In the outstanding Office Action, Claims 1-9 were rejected under 35 U.S.C. §101 because the claims are directed to a non-statutory subject matter, specifically, the claims are not directed towards the final result that is "useful, tangible and concrete;" and Claims 1-9 were rejected under 35 U.S.C. §102(e) as being anticipated by Roy Aaron Underwood (USP 6,523,027, hereinafter "Underwood").

In light of the outstanding grounds for rejection, the claims have been amended to clarify the claimed invention and thereby more clearly define statutory subject matter patentably distinguishing over the cited prior art. To that end, Claims 1, 4, and 7 are amended to clarify that the claimed invention is directed to a physical resource management system comprising a memory unit and a resource managing operation unit, which provides the selected and combined data operation modules to the external application program such that the application program can carry out a desired operation by using the provided selected and combined data operation modules. The provision of selected and combined data operations modules by the resource managing operation unit is clearly a "concrete, useful and tangible result," and thus amended Claims 1-9 are believed to recite subject matter which is clearly statutory under 35 U.S.C. §101.

Applicants further respectfully traverse the finding at page 3, first full paragraph of the outstanding Office Action that "the "system" recited in Claims 1 and 4 is software *per se*" and therefore non-statutory under 5 U.S.C. §101. Applicants rely on State Street Bank & Trust Co. v. Signature Financial Group Inc., 47 USPQ2d 1596 (Fed. Cir. 1998), where the

Federal Circuit outlined the analysis by which 101 issues are to be resolved. There, the

Federal Circuit noted:

> The question of whether a claim encompasses statutory subject matter should
> not focus on which of the four categories of subject matter a claim is directed
> to -- process, machine, manufacture, or composition of matter--but rather on
> the essential characteristics of the subject matter, in particular, its practical
> utility. Section 101 specifies that statutory subject matter must also satisfy the
> other "conditions and requirements" of Title 35, including novelty,
> nonobviousness, and adequacy of disclosure and notice. See In re
> Warmerdam, 33 F.3d 1354, 1359, 31 USPQ2d 1754, 1757-58 (Fed. Cir.
> 1994). For purpose of our analysis, as noted above, claim 1 is directed to a
> machine programmed with the Hub and Spoke software and admittedly
> produces a "useful, concrete, and tangible result." Alappat , 33 F.3d at 1544,
> 31 USPQ2d at 1557. This renders it statutory subject matter, even if the useful
> result is expressed in numbers, such as price, profit, percentage, cost, or loss.
> (Footnotes omitted)

In State Street, the Federal Circuit found "a machine programmed with ... software" statutory

where a "useful, concrete, and tangible result" is produced. The blanket rejection of Claims

1-6 on the basis that these claims are directed to software is thus clearly contrary to the

holding in State Street Bank, supra, that "a machine programmed with ... software" statutory

where a "useful, concrete, and tangible result" is produced. Reconsideration and withdrawal

of the outstanding rejection under 35 USC 101 is therefore believed to be in order and is

respectfully requested.

As an alternative ground for invalidating the '056 patent under Section 101, the court

relied on the judicially-created, so-called "business method" exception to statutory subject

matter.

Furthermore, whereas the outstanding Office Action states that these Claims 4 and 7

fail to define any structural and functional relationships between the computer program and

other claimed elements of a computer which permit the computer's program functionality to

be realized, Claim 4 is specifically directed not to a computer program but to a physical

resource management method in a physical data management system having a memory unit, and recites specific method steps which are statutory.

Still further, in regard to Claim 7 which recites a computer readable medium, MPEP §2106 explicitly states:

> ... **a claimed computer-readable medium encoded with a computer program** is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and **is thus statutory.** (emphasis added)

Thus, based on the clear language of this section, Claims 7-9 are statutory as they define a functionality which is realized based on the interrelationship of the structure to the medium and recited hardware components.

Similarly, in the recent Federal Circuit decision, In re Nuijten, 84 USPQ2d 1495 (Fed. Cir. 2007), the Federal Circuit affirmed the PTO's rejection of claims to a signal simpliciter, but the PTO has allowed a claim to a storage medium containing the very same signal, on the grounds that the storage medium is a manufacture that can be rejected, if at all, only under some provision other than § 101. Thus, the outstanding rejection of Claims 7-9 under 35 USC 101 expressly contradicts MPEP §2106 and the Federal Circuit decision in In re Nuijten, supra, and is thus clearly in error. Withdrawal thereof is therefore respectfully requested.

Turning now to the rejection of Claims 1-9 as being anticipated by Underwood, amended Claim 1 now specifically recites to a resource management system comprising a memory unit and a resource managing operation unit, to be used in a data management system for applying operations on data outputted from an external data storage system and providing data to a processing of an external application program. In this resource management system, upon receiving a data operation request from the application program,

the resource managing operation unit refers to a data operation module management table for

a plurality of data operation modules having different operation functions that are stored in

the memory unit, and selects and combines necessary data operation modules from the

memory unit and provides selected and combined data operation modules to the application

program, such that the application program can carry out a desired operation by using the

selected and combined data operation modules.

In contrast, Underwood only describes a system for providing an interface between a

first server and a second server with a proxy component situated therebetween. As the

claimed invention has absolutely nothing to do with an interface between servers, it is

respectfully submitted that Underwood is apparently irrelevant to the claimed resource

management system to be used in a data management system for applying operations on data

outputted from a data storage system and providing data to a processing of an application

program.

Moreover, Underwood clearly fails to disclose any system which has a memory unit

for storing a plurality of data operation modules for operating data which have different

operation functions, and a resource managing operation unit for managing resources provided

by these data operation modules. In particular, Underwood completely fails to disclose any

resource managing operation unit which selects and combines necessary data operation

modules and provides selected and combined data operation modules in response to a data

operation request received from an application program, such that the application program

can carry out a desired operation by using the selected and combined data operation modules.

Here, Applicants point out that the outstanding Office Action is not exactly clear as to

which portions of Underwood are being relied upon in the formulation of the outstanding

rejection under 35 USC §102(e), as the paragraph numbers referenced in the outstanding

Office Action are not provided in Underwood itself. If the outstanding rejection based on

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Underwood is not removed, the Examiner is requested to quote Underwood by column and line numbers as ordinarily done, in order to make the reason for rejection comprehensible.

Moreover, it is also pointed out that the outstanding Office Action actually fails to quote the paragraph numbers for the claimed data operation modules, so that Applicants cannot ascertain which elements of Underwood are considered as equivalent to the claimed data operation modules. Consequently, Applicants also cannot ascertain which element of Underwood is considered as equivalent to the claimed resource managing operation unit which is required to manage the data operation modules. Further clarification of the outstanding rejection based on the cited reference itself, is therefore respectfully requested.

In any event, Applicants consider it apparent from the abstract and the summary of the invention of Underwood that Underwood is not at all related to a management of resources provided by a plurality of data operation modules with different operation functions by selecting and combining necessary data operation modules.

Similarly, the reasoning stated at pages 8 and 9 of the outstanding Office Action are not understandable. If the outstanding rejection based on Underwood is maintained, Applicants respectfully request that the specific portions of USP 6,523,027 relied upon be simply and clearly correlated to specific claim features so that Applicants can understand and respond to the reasoning underlying the outstanding rejection.

For example, the Office Action's reliance on Figures 45 and 49 of Underwood as teaching the claimed resource manager is also incomprehensible, because the management applications of Figures 45 and 48 of Underwood completely fail to show any data operation modules to be managed. Similarly, Applicants respectfully question how the claimed resource managing operation unit can possibly read on the user choosing the platform, or applications, or manager, etc. in Figure 78 of Underwood which only shows an exemplary display screen to be used by the user while the claimed resource managing operation unit is

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totally unrelated to the user's operation on a display screen. Finally, in this vein, Applicants

respectfully question how the claimed resource managing operation unit can possibly read on

the SQL DBMS server of Figures 16B and 18B of Underwood while these figures completely

fail to show any data operation modules to be managed and while the claimed resource

managing operation unit is totally different functionally from any known database

management server.

Accordingly, Applicants believe it is quite impossible to conclude Underwood

anticipates the claimed invention, and request reconsideration and withdrawal of the rejection

under 35 USC §102(e).

Consequently, in view of the present amendment and in light of the above comments,

no further issues are believed to be outstanding, and Claims 1-9 are believed to be in

condition for allowance. An early and favorable action to that effect is respectfully

requested.

Respectfully submitted,

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